JUL 1 0 2006		PTO/SB/21 (09-04) Approved for use through 07/31/2006. OMB 0651-0031
TRANSMITTAL FORM  (to be used for all correspondence after initial	Art Unit  Examiner Name  Application Number  Filing Date  First Named Inventor  Art Unit  Examiner Name	tent and Trademark Office, U.S. DEPARTMENT OF COMMERCE ction of information unless it displays a valid OMB control number. 10/036,815  10/19/2001  Wayne E. Fisher  2163  Uyen T. Le
Total Number of Pages in This Submission	Attorney Docket Number  ENCLOSURES (Check all to	39802-P005US (fik/a M-11460US)
Fee Transmittal Form Fee Attached  Amendment/Reply After Final Affidavits/declaration(s)  Extension of Time Request Express Abandonment Request Information Disclosure Statement  Certified Copy of Priority Document(s) Reply to Missing Parts/	Drawing(s)  Licensing-related Papers  Petition Petition to Convert to a Provisional Application Power of Attorney, Revocation Change of Correspondence Actorney Request for Refund  CD, Number of CD(s)  Landscape Table on CD  Remarks	After Allowance Communication to TC  Appeal Communication to Board of Appeals and Interferences  Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)  Proprietary Information
Incomplete Application Reply to Missing Parts under 37 CFR 1.52 or 1.53	TURE OF ARRUGANT ATTOR	NEW OD ACENT
SIGNA Firm Name	TURE OF APPLICANT, ATTOR	NET, OR AGENT
Winstead Sechrest & Mini	ck P.G.	
Signature W.	+ Ham	
Printed name Michael P. Adams		

## CERTIFICATE OF TRANSMISSION/MAILING I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below: Signature Date July 7, 2006 Michael P. Adams Typed or printed name

Reg. No.

34,763

Date

July 7, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

# BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s):

Fisher, Wayne E.

Assignee:

NEON Enterprise Software, Inc.

Title:

Ensuring That A Database And Its Description Are Synchronized

Serial No.:

10/036,815

Filing Date:

October 19, 2001

Examiner:

Uyen T. Le

Group Art Unit:

2163

Docket No.:

39802-P005US

Confirmation

4940

(f/k/a M-11460 US)

No.:

Dallas, Texas July 7, 2006

Mail Stop Appeal Briefs - Patents COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, VA 22313-1450

# AMENDED APPEAL BRIEF RESPONSIVE TO NON-COMPLIANCE DATED 6/7/2006

# I. REAL PARTY-IN-INTEREST

The real party in interest is the assignee, NEON Enterprise Software, Inc. (f/k/a Peregrine Bridge Transfer Corporation), as named in the caption above. Appellant also attaches hereto as Exhibit A, a copy of the Notice of Recordation of Assignment Document, making a Patent Office recordation date of July 1, 2004 and a mailing date of January 5, 2005, recording a patent name change, which reflects that NEON Enterprise Software, Inc. is the current assignee.

# II. RELATED APPEALS AND INTERFERENCES

Based on information and belief, there are no appeals or interferences known to Appellant, the Appellant's legal representative, or assignee that could directly affect or be directly affected by or have a bearing on the decision by the Board of Patent Appeals in the pending appeal.

# III. STATUS OF CLAIMS

Claims 1-18 are pending in the application. Claims 1-18 stand rejected. Claims 1-18 are appealed.

# IV. STATUS OF AMENDMENTS

In an Office Action dated April 21, 2004, claims 1-18 were first rejected under either 35 U.S.C. § 102(e) or 35 U.S.C. § 103 as being unpatentable over Kim et al. (US 2002/0059279). In response to Appellant's Response to Office Action dated September 21, 2004, claims 1-18 were then rejected under 35 U.S.C. § 101, in a January 27, 2005 Office Action. In a May 27, 2005 Response to Office Action, Appellant's amended claims 1, 2 and 9. Next, in the Examiner's Final Office Action, dated August 26, 2005, claims 1-18 were rejected under: (i) 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement; and (ii) 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,748 to Ahmad et al. ("Ahmad").

# V. SUMMARY OF CLAIMED SUBJECT MATTER

P. 18, line 27 through p. 20, line 15 of the Description of the Preferred Embodiments in Appellant's application states:

"[T]he present invention relates to a method of verifying that the correct IMS control blocks are used when processing an IMS HDAM or HIDAM database.

As is well known in the art, prior to loading an IMS database there are a number of administrative functions which must be performed. One of those functions is the creation of a description of the proposed database. This description is referred to as a Data Base Description (DBD). The database description may also be referred to as the database definition. The DBD contains a number of source statements which describe the physical characteristics of the database. These source statements must be assembled and link edited, and the resulting load module is placed

into a DBD library. Subsequently, the DBD may be converted into a Data Management Block (DMB), by the IMS-provided ACB Generation utility program. As illustrated in Figs. 10 and 11, the resulting DMB is stored in an ACB library.

The actual loading of user data into a database is initiated and under the control of a load program 94, such as a user-written load program or the IMS-provided HD Reorganization Reload utility program. In either case, when initially invoked the IMS software will extract the specified DBD from a DBD library and convert it into a DMB (not shown), or extract the DMB 90 from a ACB library 92 (see Fig. 10) and place DMB into DMB pool 96. In Fig. 10, the DMB in buffer pool 96 is identified by reference numeral 98. The DMB is the control block which IMS uses to manage the loading of user data into an IMS database. It is also the control block used to subsequently process the database. It is the user's responsibility to provide the DMB for IMS to use. IMS has no way of knowing if the DMB used to create the database is identical to the DMB which should be used to subsequently process the database. If they are different, the integrity of the database is at risk.

Fig. 10 further illustrates that, in the present invention, a copy of the DMB used to load the database is saved in the database. At the point in time when the IMS software opens the database datasets for loading, a program 100 obtains control to initialize itself. Program 100 obtains a copy of the DMB from IMS and stores it into the Directory Dataset 102 of the database 104. In Fig. 10, the DMB in Directory Dataset 102 is identified as reference manual 106. The DMB 106 thus becomes a permanent part of the database. The DMB is stored within the database as one or more database records and assigned a unique location, such as the first records of the database. After the DMB used to load the database is stored in the database, it is maintained there.

Fig. 11 depicts what happens when a user program is scheduled to process the database 104.

The IMS software must first obtain a DMB 90 which describes the user-requested database. The DMB may be dynamically constructed from a DBD found in a DBD library or a previously generated

DMB found in an ACB library may be used. At the point in time when the IMS software opens the database datasets for processing, program 100 obtains control. Program 100 extracts a copy of the DMB 98 built by IMS and also extracts the DMB 106 from the database 104 that was placed there when the database was loaded (*see* Fig. 10). These two DMBs are compared. The physical characteristics described in these two DMBs should be identical. If they are not synchronized, subsequent processing of the database could cause any number of serious database integrity problems. To prevent any database damage, Program 100 alerts the user, and/or suspends any further processing of database 104 at least until the two database definitions become synchronized."

# VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- 1. Claims 1-18 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
- 2. Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,748 to Ahmad et al. ("Ahmad").

#### VII. ARGUMENT

# A. Claims 1-18 comply with 35 U.S.C. § 112, First Paragraph

Appellant's originally filed independent claim 1 sets forth "storing a copy of said description [for said IMS database] . . . within said database" and "before accessing said database, comparing said copy of the said description with said description stored in said data management block." See originally filed claim 1. In response to the Examiner's rejection of the claims under 35 U.S.C. § 101, Appellant amended the above quoted language in claim 1 to state: "storing a copy of said description [for said IMS database] . . . within said first portion of said database" and "before accessing said second portion of said database, comparing said copy of the said description with said description stored in said data management block." See originally filed claim 1. In the Examiner's Final Office action, the Examiner states that the claims fail to comply with the written description requirement,

arguing that "the description does not discuss the first and second portion of an IMS database now being claimed." For the reasons discussed below, Appellant respectfully disagrees.

Section 2163.02 of the MPEP states the following:

The courts have described the essential question to be addressed in a description requirement issue in a variety of ways. An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." In re Gosteli, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." Ralston Purina Co. v. Far-Mar-Co., Inc., 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPO 1089, 1096 (Fed. Cir. 1983)).

The subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement.

Appellant notes that the application does reasonably convey to an artisan that the description for the IMS database can be stored in a first portion of the database which is separate from a second portion of the database. Specifically, the application states: "The DMB<sup>1</sup> is stored within the database as one or more database records and assigned a unique location, such as the first records of the database." P. 19, line 23 – p. 20, line 2. Thus, the application reasonably conveys to persons of ordinary skill in the art that the description for the IMS database can be stored in a first portion of the database (e.g., "the first records of the database") which is separate from a second portion of the

Independent claim 1 states that the description for said IMS database is stored in a data management block (DMB).

database (e.g., the other records of the database). Thus, claims 1-18 clearly satisfy the written description requirement.

# B. Claims 1-18 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Ahmad

The Examiner further rejected claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over *Ahmad*. Appellant submits that claims 1-18 are allowable over *Ahmad* for at least the reasons discussed below. Appellant respectfully submits that the Examiner has not met the Examiner's burden of factually supporting a *prima facie* conclusion of obviousness.

It is the Examiner's burden to factually support any *prima facie* conclusion of obviousness. The Examiner's duty may not be satisfied by engaging in impermissible hindsight; any conclusion of obviousness must be reached on the basis of <u>facts gleaned from the prior art</u>. See MPEP §§ 2141-2144.

In a recent decision from the United States Court of Appeals for the Federal Circuit, the Federal Circuit noted that when the patent examiner and Board "rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record." *In re Sang-Su Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002). Specifically, the Federal Circuit noted that conclusory and subjective opinions about what is "basic knowledge" or "common sense" by themselves do not adequately support a determination of unpatentability. *See Id.* at 1343-44. Thus, the Federal Circuit held that findings of obviousness based on "common knowledge" must be supported by documented evidence that such knowledge exists. *See Id.* at 1344-45.

The Examiner admits that *Ahmad* does not teach several elements of the pending claims. Here, the Examiner has only offered conclusory and subjective opinions that these claim elements not taught by *Ahmad* would have been "obvious" or "well-known." The Examiner has not supported such statements with documented evidence, as he was required to do. Accordingly, the claims

rejected under § 103 are allowable over Ahmad for at least this reason.

Furthermore, the Examiner only cites to Column 6, lines 6-38 of Ahmad as supposedly

teaching the claimed invention of claims 1-18. The Examiner admits that Ahmad does not teach

several of the claimed elements. However, the Examiner has not provided sufficient evidence that

Ahmad teaches at least one other fundamental limitation of Appellant's claims: storing a copy of said

description for said IMS database within the database (see claim 1). Not only does the Examiner not

provide sufficient evidence for this limitation, the excerpt in Ahmad cited by the Examiner teaches

away from this limitation. Ahmad describes the database description being stored in auxiliary files

separate from the database:

Accessing IMS or other database data often requires reference to

auxiliary files containing information about the data. In the IMS environment, a Database Description (DBD) describes the physical

structure of the data.

Col. 6, lines 15-19. Thus, this is an additional significant reason that independent claim 1 and

dependent claims 2-18 are patentable over *Ahmad*.

CONCLUSION

For the above reasons, Appellant respectfully submits that rejection of pending Claims 1-18 is

unfounded. Accordingly, Appellant requests that the rejection of Claims 1-18 be reversed.

Respectfully submitted,

Michael P. Adams

Attorney for Applicant(s)

Reg. No. 34,763

512.370.2858

Winstead Sechrest & Minick P.C.

P.O. Box 50784

Dallas, TX 75201

# **CERTIFICATION UNDER 37 C.F.R. § 1.8**

I hereby certify that this correspondence, along with all attachments, is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Briefs – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 7, 2006.

Signature

# **CLAIMS APPENDIX** °

1. A method of ensuring that an IMS database and a description for said IMS database, are synchronized, wherein said description is stored in a data management block, and wherein said database comprises a first portion and second portion, the method comprising:

storing a copy of said description, used to load said database, within said first portion of said database, wherein said copy is maintained in said database;

before accessing said second portion of said database, comparing said copy of the said description with said description stored in said data management block; and determining whether said copy of said description and said description stored in said data management block are synchronized.

- 2. The method of claim 1, wherein said comparing step occurs before each access to said second portion of said database.
- 3. The method of claim 1, wherein said copy of the database description is stored within said database as one or more database records.
- 4. The method of claim 3, wherein said one or more database records are stored in said database in a unique location which is dependent on said database's organization.
- 5. The method of claim 1, further comprising the step of taking responsive action if said copy of the description and said description stored in said data management block are not synchronized.
- 6. The method of claim 5, wherein said responsive action includes alerting a user of a problem with said description.
- 7. The method of claim 5, wherein said responsive action includes suspending further activity with regard to said database.
- 8. The method of claim 7, wherein said further activity is suspended until said descriptions become synchronized.

- 9. The method of claim 5, wherein said comparing step occurs before each access to said second portion of said database.
- 10. The method of claim 5, wherein said copy of the database description is stored within said database as one or more database records.
- 11. The method of claim 10, wherein said one or more database records are stored in said database in a unique location which is dependent on said database's organization.
- 12. The method of claim 9, wherein said responsive action includes alerting a user of a problem with said description.
- 13. The method of claim 9, wherein said responsive action includes suspending further activity with regard to said database.
- 14. The method of claim 13, wherein said further activity is suspended until said descriptions become synchronized.
- 15. The method of claim 10, wherein said responsive action includes alerting a user of a problem with said description.
- 16. The method of claim 10, wherein said responsive action includes suspending further activity with regard to said database.
- 17. The method of claim 16, wherein said further activity is suspended until said descriptions become synchronized.
- 18. A program storage media readable by a machine and containing instructions for performing the method contained in claim 1.

# **EVIDENCE APPENDIX**

		_					
No e	vidence was s	ubmitted pur	suant to §§1.1	30, 1.131, or 1.	132 of 37 C.F	R. or of any of	other
evidence ent	ered by the Ex	aminer and	relied upon by	Appellant in th	e Appeal.		
	` .						
				·			

# **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings to the current proceeding.

# EXHIBIT A



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATEMFAND TRADEMARK OFFICE

JANUARY 05, 2005

DALLAS, TX 75201

PTAS

WINSTEAD SECHREST & MINICK P.C. MICHAEL P. ADAMS P.O. BOX 50784

JUL 1 0 2006 5



UNITED STATES PATENT AND TRADEMARK OFFICE NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 07/01/2004

REEL/FRAME: 015519/0455

NUMBER OF PAGES: 3

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

PEREGRINE BRIDGE TRANSFER

CORPORATION

DOC DATE: 08/16/2002

ASSIGNEE:

NEON ENERPRISE SOFTWARE, INC. 14100 SOUTHWEST FREEWAY SUITE 400 SUGARLAND, TEXAS 77478

SERIAL NUMBER: 10036815

PATENT NUMBER:

FILING DATE: 10/19/2001

ISSUE DATE:

TITLE: ENSURING THAT A DATABASE AND ITS DESCRIPTION ARE SYNCHRONIZED

# 015519/0455 PAGE 2

MARCUS KIRK, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

07-06-2004



To the Honorable Commissioner of Patents and Jackson Please record the attached original documents or copy thereof.  1. Name of conveying party(ies):  Peregrine Bridge Transfer Corporation  Additional name(s) of conveying party(ies) attached? I res ✓ No  3. Nature of conveyance:  Assignment		·L			U.S. DEPARTMENT OF COMMERCE		
To the Honorable Commissioner of Patents and Additional Please record the attached original documents or copy thereof.  1. Name of conveying party(ies):  Peregrine Bridge Transfer Corporation  Additional name(s) of conveying party(es) attached response to the party of the part	(Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)	10278	3427	U.S. I	Patent and Trad	lemark Off	ice
1. Name of conveying party(ies) Peregrine Bridge Transfer Corporation  Additional name(s) of conveying party(ies) attached?   Yes   No  3. Nature of conveyance:   Assignment   Merger   Street Address: 14100 Southwest Freeway   Suite 400  City: Sugarland   State: TX   Zip: 77478   Additional name(s) & addressées) attached?   Yes   No  4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is:   A. Patent Application No.(s)   10/036,815   B. Patent No.(s)   B. Patent No.(s)   S. Name and address of party to whom correspondence concerning document should be mailed:   Name   Michael P. Adams   Internal Address:   Winstead Sechrest & Minick P.C.   P.O. Box 50784   P.C.   P.O. Box 50784   B. Deposit account number:   P. P. F. C.	Tab settings ⇔⇔ ♥	<b>Y Y</b>	▼_:	•		▼	
Peregrine Bridge Transfer Corporation    Additional name(s) of conveying party(ses) attached?   res   No	To the Honorable Commissioner of	Patents and Ordonness.	Please record the attac	ched original docume	ents or copy the	reof.	
Additional name(s) of conveying partyles) attached? Yes No  3. Nature of conveyance:    Assignment		JUL 1 0 2006	Name: <u>NEC</u>	ON Enterprise	• • • • •		- -
Street Address: 14100 Southwest Freeway  Scurity Agreement  □ Other  S/16/2002  Execution Date:  Additional name(s) & address(es) attached? □ Yes ☑ No  4. Application number(s) or patent number(s):  If this document is being filed together with a new application, the execution date of the application is:  A Patent Application No.(s) 10/036,815  B. Patent No.(s)  Additional numbers attached? □ Yes ☑ No  5. Name and address of party to whom correspondence concerning document should be mailed:  Name: Michael P. Adams  Internal Address: Winstead Sechrest & Minick P.C.  P.O. Box 50784  Street Address: □ Authorized to be charged to deposit account □ Authorized to be charged to deposit account □ Street Address: □ City. Dallas State: TX Zip: 75201  DO NOT USE THIS SPACE  9. Signature.  Name of Person Signing  Signature  Date	Additional name(s) of conveying party(es) at		Internal Addre	ess:		· · · · · · · · · · · · · · · · · · ·	- 
Street Address: 14100 Southwest Freeway  Suite 400  City: Sugarland State: TX Zip: 77478  Additional name(s) & address(es) attached? Yes \ No  4. Application number(s) or patent number(s):  If this document is being filed together with a new application, the execution date of the application is:  A. Patent Application No.(s) 10/036,815  B. Patent No.(s)  Additional numbers attached? Yes \ No  5. Name and address of party to whom correspondence concerning document should be mailed:  Name: Michael P. Adams  Internal Address: Winstead Sechrest & Minick P.C.  P.O. Box 50784  Street Address: 23-2426  DO NOT USE THIS SPACE  9. Signature.  Michael P. Adams  Name of Person Signing  Signature  Date	3. Nature of conveyance:	······································					•
Security Agreement	Assignment	Merger	Stroot Address	c. 14100 Southw	vest Freeway	,	_
Execution Date:		Change of Name		5. 77100 Codum	·	<u> </u>	
4. Application number(s) or patent number(s):  If this document is being filed together with a new application, the execution date of the application is:  A. Patent Application No.(s) 10/036,815  B. Patent No.(s)  Additional numbers attached?  Yes No  5. Name and address of party to whom correspondence concerning document should be mailed:  Name: Michael P. Adams  Internal Address: Winstead Sechrest & Minick P.C.  P.O. Box 50784  City: Dallas State: TX Zip: 75201  DO NOT USE THIS SPACE  9. Signature.  RESTACHE 00000005 10036815  Michael P. Adams  June 29, 2004  Name of Person Signing  Signature  Date	8/16/2002					<u>·</u>	
If this document is being filed together with a new application, the execution date of the application is:  A. Patent Application No.(s) 10/036,815  B. Patent No.(s)			Additional name(s	) & address(es) attac	ched? Yes	3  ✓ No	· .
5. Name and address of party to whom correspondence concerning document should be mailed:  Name: Michael P. Adams  Internal Address: Winstead Sechrest & Minick P.C.  P.O. Box 50784  Street Address:  City: Dallas State: TX Zip: 75201  DO NOT USE THIS SPACE  9. Signature.  Name of Person Signing  6. Total number of applications and patents involved: 1  7. Total fee (37 CFR 3.41)	· II		Programme and the second secon	s)	÷		
concerning document should be mailed: Name: Michael P. Adams  Internal Address: Winstead Sechrest & Minick P.C.  P.O. Box 50784  Street Address: Address: Street Address: 23-2426  City: Dallas State: TX Zip: 75201  DO NOT USE THIS SPACE  9. Signature.  Michael P. Adams  Name of Person Signing  Name of Person Signing  7. Total fee (37 CFR 3.41)		Additional numbers att	ached? Yes 🗸	1o			•
Internal Address: Winstead Sechrest & Minick P.C.  P.O. Box 50784  Street Address:  City: Dallas  State: TX Zip: 75201  DO NOT USE THIS SPACE  9. Signature.  RETACHE 0000005 10036815  Michael P. Adams  Name of Person Signing  Name of Person Signing  Lity: Enclosed  Authorized to be charged to deposit account number:  8. Deposit account number:  23-2426  DO NOT USE THIS SPACE  9. Signature.  June 29, 2004			· · · · · · · · · · · · · · · · · · ·	<del></del>		- W	
Authorized to be charged to deposit account    P.O. Box 50784	Name: Michael P. Adams		7. Total fee (37 Cl	FR 3.41)	<u>\$</u> 40.00	) 	
Street Address:    Street Address:   23-2426   2   2   2   2   2   2   2   2   2	Internal Address: Winstead Sechre	est & Minick P.C.	Enclosed				
Street Address:    Street Address:   23-2426	P.O. Box 50784		Authorized	to be charged to	o deposit acc	ount	
DO NOT USE THIS SPACE  9. Signature.  Michael P. Adams  Name of Person Signing  Michael P. Signature  Signature  Do Not Use This space  June 29, 2004  Date	Street Address:		8. Deposit accour	nt number:	PR/		
DO NOT USE THIS SPACE  9. Signature.  Michael P. Adams  Name of Person Signing  Michael P. Signature  Signature  Do Not Use This space  June 29, 2004  Date			:	23-2426		l	8 ( سجم مجد
9. Signature.  Michael P. Adams  Name of Person Signing  MOTOSE THIS SPACE  June 29, 2004  Signature  Date	City: Dallas State: TX Zip:	75201			ANCE		
Michael P. Adams  Name of Person Signing  Misser Adams  Michael P. Adams  Signature  Date		DO. NOT. USE.	THIS SPACE			<del></del>	
Name of Person Signing	MSETACHE 00000005 10036815	A	1 0 1				
	Michael P. Adams	Whi	hal Adar	<u>-</u>		004	
		or of pages including a	•	3			1



# CERTIFICATE OF AMENDMENT

## OF THE

#### CERTIFICATE OF INCORPORATION

OF

#### PEREGRINE/BRIDGE TRANSFER CORPORATION

PEREGRINE/BRIDGE TRANSFER CORPORATION (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "GCL"), in order to amend its Certificate of Incorporation pursuant to Section 242 of the GCL, certifies as follows:

- 1. The name of the Corporation is Peregrine/Bridge Transfer Corporation. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of Delaware on November 1, 1995.
- 2. Pursuant to the applicable provisions of Section 242 of the GCL, the Board of Directors of the Corporation, by Unanimous Written Consent dated as of August 16, 2002, duly adopted a resolution setting forth the following amendment to the Corporation's Certificate of Incorporation and declaring such amendment advisable.
- 3. The sole stockholder of the Corporation, pursuant to the provisions of Section 228 of the GCL, by Written Consent dated as of August 16, 2002, duly adopted such amendment.
- 4. The authorized capital of the Corporation shall be increased from 1,000 shares of common stock, \$0.001 par value per share, to 11,000 shares of common stock, \$0.001 par value per share, by reason of this amendment.
- 5. Article 1 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

### **ARTICLE 1**

The name of the Corporation is NEON Enterprise Software, Inc. (the "Corporation").

6. Article 4 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

# **ARTICLE 4**

The Corporation is authorized to issue one class of shares to be designated Common Stock. The total number of shares of Common Stock this Corporation shall have the authority to issue is 11,000, with par value of \$0.001 per share.

7. Article 5 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

# **ARTICLE 5**

The name and mailing address of the agent for service of process for the Corporation are as follows:

Wayne E. Webb Jr. NEON Enterprise Software, Inc. 12680 High Bluff Dr., Suite 200 San Diego, CA 92130

Peregrine/Bridge Transfer Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer as of August 16, 2002.

# PEREGRINE/BRIDGE TRANSFER CORPORATION

By:

James Bradford Poynter Chief Financial Officer and Secretary